

TENNESSEE ETHICS COMMISSION
ADVISORY OPINION 07-07
July 31, 2007
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Interpretation of T.C.A. §§ 3-6-304 and 3-6-305,
with respect to an employer of a lobbyist's ability to
provide travel expenses and otherwise
underwrite professional conferences.

INTRODUCTION

The following Advisory Opinion is in response to a written inquiry from Ms. Candi Rawlins, Executive Director and a lobbyist for the Tennessee Recreational Parks Association ("TRPA").

Ms. Rawlins asks the following questions:

- (1) Is TRPA permitted to pay the travel and lodging expenses of their President and President-Elect to its national conferences and regional meetings?
- (2) Is the TRPA permitted to purchase lunch for the members of the Executive Committee when conducting a working lunch?
- (3) Is the TRPA permitted to provide a meal ticket to staff members and state officials who volunteer at events as a token of appreciation?
- (4) Is the TRPA permitted to offer state officials membership packages and discounts to state agencies?
- (5) Is the TRPA permitted to co-sponsor an educational training event with another state agency and cover the costs of the meals, materials and meeting rooms??
- (6) Is the TRPA permitted to provide food and refreshments to members if an event is sponsored by an employer of a lobbyist other than TRPA?
- (7) Is the TRPA permitted to rent meeting space from state or local governments?

In response to the above questions, the Tennessee Ethics Commission ("Commission") concludes:

- (1) Yes. TRPA can pay for travel and lodging expenses for TRPA officers who are

also state officials because their status as state officials is incidental to their membership being TRPA officers.

(2) Yes. TRPA can provide lunch to members of the executive committee as long as the value of the lunch is less than \$50.00.

(3) Yes. TRPA is permitted to provide a meal and beverage to state officials, staff members, or volunteers who participate at conferences, events or executive meetings provided that the cost of the meals and beverages (a) do not exceed \$50.00 per person, per day, (b) that, if members of the general assembly attend, they do not receive their per diem allowance for that day and (c) an officer or management-level employee of each employer of a lobbyist paying for the event must actually attend the event.

(4) Yes. TRPA may also provide membership packages and discounts to prospective members as long as the membership packages and discounts are made available to all members and not exclusively to state officials.

(5) Yes. TRPA may co-sponsor an event with another agency as long TRPA's sponsorship is in exchange for a service.

(6) Yes. TRPA may provide members food and refreshments to an event sponsored by an employer of a lobbyist other than TRPA.

(7) Yes. TRPA is permitted to rent space from local or city government as long as sufficient consideration is given as the association pays the fair market value of the meeting rental space.

BACKGROUND

Ms. Rawlins, the Executive Director and a lobbyist for TRPA, states that its membership includes public employees who work in parks and recreation at the city, county state and federal levels, and private citizens who have an interest in parks and recreation. In the past, TRPA has provided financial assistance to its President and President-Elect to travel to its national conferences and regional meetings. Additionally, TRPA has an administrative budget which allows it to pay for lunch when its executive committee holds a meeting. Furthermore, persons who serve on the host committee for a conference are provided a meal ticket, in exchange for their assistance with the program.

Lastly, TRPA will occasionally co-sponsor an event with another state agency and will also rent meeting space from local or state governmental entities.

DISCUSSION

(1) Is TRPA permitted to pay for travel and lodging expenses of their President and President-Elect, who may also be state officials, to its national conferences or regional meetings?

T.C.A. § 3-6-304(h) provides:

Except to the extent permissible under T.C.A. § 3-6-305, no employer of a lobbyist, lobbyist or any person acting at the direction of an employer of a lobbyist shall pay the lodging expenses of an official in the legislative or executive branch or immediate family of the official.

According to the facts submitted, the TRPA has traditionally paid for a portion of the travel and lodging expenses of the President and President-Elect regardless of whether the officer was employed by the private or government sector. More important, the status of the President or Vice-President Elect as a state official is incidental to membership and paying for a portion of their expenses. For example, the Tennessee Bar Association, an employer of a lobbyist, pays for their President to attend a state-wide conference every year. In fact, the expenses of the President would be paid by the association regardless of whether the President. TRPA's President should not be penalized simply because he/she is a state official. Therefore, TRPA should be permitted to pay for a portion of the travel and lodging expenses of their President and President Elect because their role as an officer in the TRPA is incidental to their status as a state official.¹

(2) Is the TRPA permitted to purchase lunch for the members of the Executive Committee, who may also be state officials, when conducting a working lunch?

¹ In accepting for travel expenses, the state official should consider whether they have a pending issue before the employer, in order to avoid the appearance of impropriety.

T.C.A. § 3-6-305(b)(10), provides in part:

(10) (A) Food, refreshments, meals, or beverages that are provided by an employer of a lobbyist in connection with an in-state event to which invitations are extended to an official or officials in the legislative branch or official or officials in the executive branch; provided, that:

(i) No employer of a lobbyist may provide food, refreshments, meals, or beverages, the value of which to the official exceeds fifty dollars (\$50.00) per event per day, excluding sales tax and gratuity; nor may such employer of a lobbyist provide any such items to any official pursuant to this subdivision (b)(10)(A)(i) that have a cumulative value of more than one hundred dollars (\$100) to the official during a calendar year;

(ii) The value of any such gift may not be reduced below such monetary limitations by dividing the cost of the gift among two (2) or more employers of lobbyists;

(iii) This exception to the prohibition in subsection (a) only applies to a member or members of the general assembly, if the member or members do not receive a per diem allowance pursuant to § 3-1-106, for the day on which the event is held and the member or members do not receive any food, refreshments, meals or beverages that are provided in connection with the in-state event that are not offered or provided to other nonmembers in attendance at the event; and

(iv) An officer or management-level employee of each employer of a lobbyist paying for the event shall attend the event; however, a lobbyist shall not be considered to be an officer or management-level employee of an employer of the lobbyist paying for the event for purposes of this subdivision (b)(10)(A)(iv).

Pursuant to T.C.A. § 3-6-305(b)(10)(A)(i), state officials may attend the working lunch as long as the value of any food, refreshments, or beverages that are being provided by an employer of a lobbyist (a) do not exceed \$50.00 per person, per day, (b) the members of the general assembly do not receive their per diem allowance for that day (e.g., the legislator must choose between receiving the free food, entertainment, etc., or receiving their per diem; if they choose to receive their per diem they must reimburse the employer for the costs of the food, entertainment, etc.); and (c) an officer or

management-level employee of each employer of a lobbyist paying for the event must actually attend the event. Thus, TRPA is permitted to provide committee members a meal because it qualifies as an in-state event.

(3) Can TRPA provide a meal ticket to state officials who volunteer at conference events as a token of appreciation?

As stated above, T.C.A. § 3-6-305(b)(10)(A)(i) permits state officials, who volunteer at a TRPA conference, to be provided a meal ticket as a token of their appreciation as long as the value of any food, refreshments, or beverages that are being provided by an employer of a lobbyist (a) do not exceed \$50.00 per person, per day, (b) the members of the general assembly, who attend the event do not receive their per diem allowance for that day (e.g., the legislator must choose between receiving the free food, entertainment, etc., or receiving their per diem; if they choose to receive their per diem they must reimburse the employer for the costs of the food, entertainment, etc.); and (c) an officer or management-level employee of each employer of a lobbyist paying for the event must actually attend the event.

(4) Is the TRPA permitted to offer membership packages and discounts to state agencies?

T.C.A. §3-6-305(b)(6) states:

(6) Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to:

(A) Discounts afforded to the general public or specified groups or occupations under normal business conditions, except that such discounts may not be based upon on the status of the candidate or official;

From the information provided to the Commission, a membership package provides opportunities and benefits such as monthly magazines, access to employment vacancies, notice of educational workshops and access to a membership listserve. Moreover, the opportunities and membership benefits are being made available to any agency that would like to purchase a membership package regardless of their status as a state official. Therefore, the exception

contained in T.C.A. § 3-6-305(b)(6)(A) permits TRPA to offer state agencies membership packages, as well as other discounts given to members provided that there are no enhanced benefits based upon their status as state officials.

(5) Is the TRPA permitted to co-sponsor an educational training event with another state agency and pay the state agency a sponsorship to cover the costs of the meals, materials, and meeting room fees?

From the facts provided, it is not clear whether TRPA's sponsorship is in exchange for a service or whether TRPA is simply giving the co-sponsoring state agency a contribution for the event. If co-sponsoring an event with another state agency, TRPA is purchasing a service of some type in exchange for their sponsorship, such as advertising rights at the event, meals, or materials, it does not matter what the agency uses the sponsorship contribution for because TRPA has purchased a service for which consideration has been provided. More important, T.C.A. § 3-6-305(b)(10) permits this type of sponsorship. On the other hand, if TRPA is not purchasing a service, in exchange for their sponsorship and is simply giving the state agency a contribution for the event, the gift ban applies because there is no consideration being provided, in exchange for the sponsorship. Moreover, the rules set forth in T.C.A. § 3-6-305 do not provide an exception for this type of gift and thus is not permissible.

6) Is the TRPA permitted to provide food and refreshments to members, if an event is sponsored by an employer of a lobbyist other than TRPA?

Pursuant to T.C.A. § 3-6-305(b)(10)(A)(i), state officials may attend, as long as the value of any food, refreshments, or beverages that are being provided by an employer of a lobbyist (a) do not exceed \$50.00 per person, per day, (b) the members of the general assembly do not receive their per diem allowance for that day (e.g., the legislator must choose between receiving the free food, entertainment, etc., or receiving their per diem; if they choose to receive their per diem they must reimburse the employer for the costs of the food, entertainment, etc.) ;and (c) an officer or management-level employee of each employer of a lobbyist paying for the event must actually attend the event. In this scenario, an employer of a lobbyist, other than TRPA, seeks to sponsor an event that will

benefit members of TRPA. In contrast, in question #2 and question #3, TRPA is the employer of a lobbyist furnishing food and beverages to employees, committee members and volunteers. Either way, the same rules will apply. Thus, an employer of a lobbyist other than TRPA is permitted to provide food, beverage and refreshments to TRPA registered delegates, members and volunteers.

(7) Is TRPA permitted to rent meeting space from state or local government?

From the facts provided to us, TRPA wishes to host a meeting and rent space at the state park. Additionally, TRPA plans to host an event in Memphis in 2008. TRPA plans to pay the State of Tennessee, as well as the city of Memphis, for meeting space. The solicitation of an item with value is not a gift, provided that sufficient consideration is being given. The fact that TRPA would be negotiating a contract with a local or state government, in exchange for services serves as sufficient consideration. Moreover, TRPA would be paying fair market value for services rendered. There is no indication that the City of Memphis, or the State of Tennessee is offering the rental space for free or less than fair market value. Therefore, it is permissible for TRPA to rent space from wither a local or state government as long as they pay the fair market value of the rental of the space.

CONCLUSION

Although the statute generally prohibits an employer of a lobbyist from paying the travel and lodging expenses of a state official, the Commission finds that the legislative intent of the statute was not meant to bar all state officials from attending a conference at the expense of the organization where they hold membership, especially when the status as a state official is incidental to their membership and the employer of a lobbyist provides the benefit to all of its officers regardless of whether they are state officials. TRPA may provide a meal to committee members, volunteers or staff members who are participants at any type of in-state event held by the TRPA, as long as the cost of the meal, beverage or refreshments provided is under \$50.00. Moreover, the statute also permits TRPA to provide membership packages and discounts to TRPA members, as long as the discounts are made available to all members and state officials do not receive

an enhanced benefit. Lastly, TRPA is also able to rent meeting space from state and local government as long as the association pays fair market value of the facilities.

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